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IN

THE SUPREME COURT

OF THE

UNITED STATES

E. M. WHITTENTON, INC., AND
SECURITY INSURANCE GROUP,

Petitioners,

VS.

Paul W. Neighbors, Jr., and The State of Florida,
Department of Commerce, Division of
Labor and Employment Opportunities,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Florida

---

Monterey Campbell, III of
Tomasello, Campbell, Dunlap & Norris
P. O. Drawer 30
155 West Davidson Street
Bartow, Florida 33830

ATTORNEY FOR PETITIONERS

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IN THE SUPREME COURT OF THE UNITED STATES

E. M. WHITTENTON, INC., and SECURITY INSURANCE GROUP,
Petitioners,

vs.

PAUL W. NEIGHBORS, JR., and THE STATE OF FLORIDA, DEPARTMENT OF COMMERCE, DIVISION OF LABOR AND EMPLOYMENT OPPORTUNITIES,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Petitioners, E. M. Whittenton, Inc., and Security Insurance Group, by their undersigned attorney of record, admitted to practice before this Court, present this Petition for Writ of Certiorari to the Florida Supreme Court, and show in support of the Petition as follows:

1. ORDER SOUGHT TO BE REVIEWED. The petitioners seek to have reviewed an order of the Supreme Court of Florida dated October 29, 1969, in Case No. 38,339, styled E. M. Whittenton, Inc., et al., Petitioners, vs. Paul W. Neighbors, Jr., et al., Respondents, which said order denied Petitioners Petition for Certiorari to the Supreme Court of the State of Florida, which said petition to the Supreme Court of the State of Florida sought review of a compensation order of the then Florida Industrial Commission, Workmen's Compensation Division, en-

tered at Tallahassee, Florida, on February 6, 1969. The Legislature of the State of Florida, in 1969, reorganized the agencies of the Executive Branch of its Government, and the then Florida Industrial Commission was made the Division of Labor and Employment Opportunities of the Department of Commerce of the State of Florida, named as Respondent herein. The order of the then Florida Industrial Commission dated February 6, 1969, affirmed a compensation award by a Judge of Industrial Claims of the Florida Industrial Commission entered April 11, 1968, and the claims before the Florida Industrial Commission bore Claim No. 245-52-8375. None of the three orders and opinions entered were reported, but are set forth herein in the Appendix hereto, respectively commencing on Pages 20, 21, and 23 of the Appendix hereto.

2. JURISDICTIONAL GROUNDS. The grounds on which the jurisdiction of this Court is sought to be invoked are that the Florida Supreme Court and the then Florida Industrial Commission failed to give full faith and credit under Article IV, Section 1 of the Constitution of the United States of America to a prior award of compensation for personal injury to the Respondent, Paul W. Neighbors, Jr., under the North Carolina Workmen's Compensation Act, Chapter 97, of the North Carolina General Statutes. The date of such orders sought to be reviewed are as set forth in 1. above, and the statutory provisions believed to confer jurisdiction to review the orders by Writ of Certiorari are Title 28, United States Code, Section 12, Section 57(3), Section 2101(c) and Rule 19 1(a), Supreme Court of the United States Revised Rules.

3. QUESTION PRESENTED FOR REVIEW. The question presented to this Court for review is whether, under the full faith and credit clause, Article IV, Section 1 of the Constitution of the United States of America, an award of compensation for personal injury under the North Carolina Workmen's Com-

pensation Law, Chapter 97, of the General Statutes of North Carolina, bars a further recovery of compensation for the same injury under the Florida Workmen's Compensation law, Chapter 440, Revised Florida Statutes, 1965.

4. CONSTITUTIONAL PROVISIONS AND STATUTES. The constitutional provisions and statutes which the case involves are as follows:

(a) Constitution for the United States of America, Article IV, Section 1. "Full faith and credit shall be given in each State to the proper acts, records, and judicial proceedings of every other State And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

(b) Chapter 97, General Statutes of North Carolina, Section 10.1. Vol. 2 D, Page 53. "Other rights and remedies against employer excluded. If the employee and the employer are subject to and have accepted and complied with the provisions of this article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death."

(c) Chapter 97, General Statutes of North Carolina, Section 36, Vol. 2D, Page 86. "Accidents taking place outside State; employee receiving compensation from another state. Where an accident happens while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, if the employer's place of business is in this State; provided his contract of employment

was not expressly for service exclusively outside of the State; provided, however, if an employee shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this article."

(d) Chapter 97, General Statutes of North Carolina, Section 82, Vol. 2 D, Page 122. "Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval. If after seven days after the date of the injury, or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this article, a memorandum of the agreement in the form prescribed by the Industrial Commission, accompanied by a full and complete medical report, shall be filed with and approved by the Commission; otherwise such agreement shall be voidable by the employee or his dependents.

If approved by the Commission, thereupon the memorandum shall for all purposes be enforceable by the court's decree as hereinafter specified."

(e) Section 440.19(1) (a), Florida Statutes, 1965, at Vol. 2, Page 2048. "Time and procedure for filing claims. (1) (a) The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within two years after the time of injury, except that if payment of compensation has been made or remedial treatment has been furnished by the employer without an award on account of such injury a claim may be filed within two years after the date of the last payment of compensation or after the date of the last remedial treatment furnished by the employer."

(f) Section 440.19(2), Florida Statutes, 1965, at Vol. 2, Page 2049. "Notwithstanding the provisions of subsection (1)

failure to file claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard."

5. STATEMENT OF CASE AND FACTS, INCLUDING DISPOSAL OF FEDERAL QUESTIONS RAISED. A review of the case and the facts reveals that the Petitioner, E. M. Whittenton, Inc., was the Employer below; the Petitioner, Security Insurance Group, was the Employer's Carrier below; and the Respondent, Paul W. Neighbors, Jr., was the Employee-Claimant below. The parties will be referred to as Petitioners and Respondents.

The Respondent, Paul W. Neighbors, Jr., filed his claim for compensation on November 9, 1967, with the Respondent, Florida Industrial Commission seeking compensation for temporary total disability and/or temporary partial disability and/or permanent partial disability and/or permanent total disability arising out of an accident suffered in the course of his employment on February 22, 1964. The claim was heard by Rodgers A. Whitmore, Judge of Industrial Claims, on January 5, 1968. The Petitioners filed a Motion to Dismiss the claim on the grounds that the Respondent, Florida Industrial Commission, lacked jurisdiction in that the North Carolina Workmen's Compensation Statutes and the proceedings had and the benefits derived by the Respondent, Paul W. Neighbors, Jr., thereunder, in view of Article IV, Section 1 of the Constitution of the United States of America, excluded relief under the Florida Workmen's Compensation Act, and on the further grounds that Respondent, Paul W. Neighbors, Jr., had failed to file his claim within the limitations imposed by Section 440.19, Florida Statutes, 1965. The Judge of Industrial Claims entered his compensation order on April 11, 1968, making findings that the Respondent, Florida

Industrial Commission, did have jurisdiction of the parties and the subject matter, and that the Petitioner-Carrier had voluntarily paid, under North Carolina Compensation Act, temporary total compensation at the rate of $37.50 per week from February 22, 1964, to September 29, 1967, and further finding that Respondent, Paul W. Neighbors, Jr., was entitled to compensation under the Florida Statutes at the rate of $42.00 per week from February 22, 1964, to the time he reached maximum medical improvement on September 29, 1967, with a credit being allowed for the payments made under the North Carolina Act. On April 18, 1968, Petitioner's Employer and Carrier filed their application for review by the Full Respondent Commission of the said compensation order of April 11, 1968, on the ground that the Judge of Industrial Claims erred in failing to dismiss the claim for failure to comply with the time limitations as prescribed by Section 440.19, Florida Statutes, 1965; on the further ground that notice as required by Section 440.18, Florida Statutes, 1965, was not given by the Respondent-Employee or his representative to the Respondent, Florida Industrial Commission, and that therefore, the Judge of Industrial Claims erred in not dismissing the claim; on the further ground that the award of compensation under the Florida Workmen's Compensation Act violates Article IV, Section 1, of the Constitution of the United States of America, in that it does not give full faith and credit to the award under the laws of the State of North Carolina, which were *res judicata* of the same issues involved in the Florida claim; on the further ground that the award violates Article IV, Section 1 of the Constitution of the United States of America, in that it did not give full faith and credit to Section 97-10.1, of the North Carolina Workmen's Compensation Act, which provides that the rights thereunder "shall exclude all other rights and remedies of the Employee"; on the further ground that compensation order was in error in finding that no claim had been filed by the Respondent-Employee under the North Carolina Workmen's Compensation Act; and further erred in finding that

the case of *Industrial Commission of Wisconsin vs. E. E. McCartin, Continental Casualty Company,* 330 U. S. 622, 67 S.Ct. 886, 91 L.Ed. 1140 (1947) instead of *Magnolia Petroleum Co. vs. Hunt,* 320 U. S. 430, 65 S.Ct. 208, 88 L.Ed. 49 (1943), was applicable to the case; and further erred on the ground that Respondent, Florida Industrial Commission lacked jurisdiction over the subject matter and the parties hereto.

The Respondent, Full Florida Industrial Commission, did not specifically rule upon Petitioners' Federal questions which were raised and sought to be reviewed as neither did the Supreme Court of Florida, the only specific reference being in the compensation order of the Judge of Industrial Claims, holding that the decision in *Industrial Commission of Wisconsin vs. E. E. McCartin, Continental Casualty Company,* supra, was controlling. These opinions and decisions are set forth in the Appendix herein as indicated in 1. above. The question was raised on appeal from the compensation order of the Judge of Industrial Claims to the Respondent, Full Florida Industrial Commission, by the following two questions: "Is Respondent-Employee's claim before the Respondent, Florida Industrial Commission, and the right to compensation thereunder barred for failure to file his claim within two years after the time of injury as required by Section 440.19, Florida Statutes, 1965?" and "Does the Respondent, Florida Industrial Commission, have jurisdiction to adjudicate Respondent-Employee's claim in view of the provisions of the North Carolina Workmen's Compensation Act, and the payments made thereunder, and Article IV, Section 1 of the Constitution of the United States of America, or is the award of compensation to the Respondent-Employee under the North Carolina Workmen's Compensation Act *res judicata,* and, therefore, entitled to full faith and credit by the Respondent, Florida Industrial Commission pursuant to Article IV, Section 1 of the Constitution of the United States of America?" The same two questions were raised in the Petition for Certiorari to the Supreme Court of Florida.

The facts show that the Respondent, Paul W. Neighbors, Jr., resides in Dunn, North Carolina, has been a life-long resident of the State of North Carolina, having gone to work for the Petitioner-Employer in April of 1961 (Transcript of Record, Pages 45 and 24). The Respondent-Employee was hired by the Petitioner-Employer in Dunn, North Carolina, to drive a truck up and down the east coast of the United States of America and in the mid-west, and was involved in the accident which resulted in the claim of the Respondent-Employee on February 22, 1964 (Transcript of Record, Page 24). Petitioner, E. M. Whittenton, Inc., the Employer, is a closely held Florida corporation of which E. M. Whittenton is the principal stockholder, a director and president. Mr. Whittenton is a resident of Dunn, North Carolina, and the Petitioner-Employer's company's business enterprises are principally located and conducted chiefly out of the company's office in Dunn, North Carolina, which is the home office of the Florida incorporated company, whose principal business is long-haul trucking (Transcript of Record, Page 84). Respondent-Employee was a resident, as heretofore stated of Dunn, North Carolina, when hired by the Petitioner-Employer, and was employed in and hired after making application for employment, at the Dunn, North Carolina, office of the Petitioner-Employer (Transcript of Record, Page 24). The injury of the Respondent-Employee occurred as a result of an accident on February 22, 1964 (Transcript of Record, Page 3). The accident occurred in Hardee County, Florida, south of Wauchula, while the Respondent-Employee was driving his Petitioner-Employer's truck empty in route to pick up a load of tomatoes in Fort Myers, Florida, to be delivered to Philadelphia, Pennsylvania (Transcript of Record, Pages 9 & 84). Respondent-Employee lost control of his vehicle, turned over in a ditch, in a one-vehicle accident, and was pinned underneath his vehicle suffering injuries. He was further injured when the ambulance in which he was being transported to the Wauchula, Florida, hospital was involved in an intersection collision in Wauchula,

and the Respondent-Employee thrown out into the street. Nineteen days after the accident, having been confined in the Wauchula hospital during that time, he was transferred by ambulance back to his home in Dunn, North Carolina, and spent thirty to forty-five days in the hospital there at that time (Transcript of Record, Pages 37 & 48). On April 3, 1964, after the accident on February 22, 1964, while in the hospital in Dunn, North Carolina, Respondent-Employee signed a North Carolina Industrial Compensation Commission Agreement for Compensation Disability, being a North Carolina Form 21, required by Section 97-82 of the North Carolina Workmen's Compensation Act. This agreement was witnessed by the Respondent-Employee's brother-in-law and was approved by the North Carolina Industrial Commission on April 8, 1964, thereby, pursuant to Section 97-82 of the North Carolina Workmen's Compensation Act, becoming an award of the North Carolina Industrial Commission, entitled to enforcement by a court decree (Transcript of Record, Pages 48-50 & 52). The agreement (Transcript of Record, Page 52), provided for maximum weekly benefits under the North Carolina Workmen's Compensation Act, and further provided for medical payments. The payments, pursuant to this agreement, were all regularly and duly made by the Petitioner-Carrier on behalf of the Petitioner-Employer with the Petitioner-Carrier having paid all medical bills incurred, and maximum compensation benefits allowable under North Carolina law. Medical evidence indicates that on January 17, 1967, Respondent-Employee's physician felt that Respondent-Employee had reached maximum medical improvement (Transcript of Record, Pages 59 and 60). Respondent-Employee's physician did not again see the Respondent-Employee until April 10, 1967, after which he was admitted to the hospital again on April 15, 1967, and surgery performed on May 1, 1967 (Transcript of Record, Pages 66 & 67). Respondent-Employee was discharged from the care of his physician on September 29, 1967 (Transcript of Record, Pages 61 & 63). Respondent-Employee filed his claim for the

first time with the Respondent, Florida Industrial Commission, on November 9, 1967, three years and approximately nine months after the accident, with no previous notice having been given to either the Respondent, Florida Industrial Commission, or Petitioner-Employer or Carrier of any intended claim under the Florida law. Respondent-Employee was the only person called as a witness at the time of the hearing. It was stipulated that the Petitioner-Employer and Petitioner-Carrier accepted the claim of Respondent-Employee under the North Carolina Workmen's Compensation Act (Transcript of Record, Page 7).

6. REASONS AND ARGUMENT FOR ALLOWANCE OF THE WRIT. The reasons relied on for the allowance of this Writ are that in failing to hold that the claim in Florida was barred for not being filed within two years of the date of the accident, the Florida Supreme Court, the Florida Industrial Commission, and the Judge of Industrial Claims necessarily had to determine that the compensation agreement entered pursuant to North Carolina law was not an award for the reason that Section 440.19(1) (a), Florida Statutes, 1965, provides that the claim is so barred except where payment has been made without an award. A further reason for the allowance of this Writ is that such a compensation agreement entered in accord with Chapter 97, General Statutes of North Carolina, Section 82 under North Carolina Law becomes an award enforceable by Court decree. In support of these reasons, the Petitioner shows that Respondent-Employee's injury arose out of an accident which occurred on February 22, 1964 (Transcript of Record, Page 3). His claim before the Florida Industrial Commission as revealed by the claim on file with the Commission, was not filed until November 9, 1967. On April 3, 1964, Respondent-Employee signed in Dunn, North Carolina (Transcript of Record, Page 27), an Agreement for Compensation for Disability on North Carolina Industrial Commission Form 21 (Transcript of Record, Page 52). This agreement provided for compensation at the rate

of $37.50 per week beginning on February 23, 1964, the day after the accident. The signing of the agreement by the Respondent-Employee was witnessed by R. E. Lee, the husband of Respondent-Employee's sister-in-law (Transcript of Record, Pages 49 and 52). The agreement was approved by the North Carolina Industrial Commission on April 8, 1964 (Transcript of Record, Page 52). Payment continued from February 23, 1964, to and including the time of the hearing on January 5, 1968 (Transcript of Record, Pages 6 and 7). Section 440.19, Florida Statutes, 1965, is clearly applicable as a bar to Respondent-Employee's claim, as the payments made by Petitioner-Employer through its Petitioner-Carrier, *were made* pursuant to an award. Since the payments were made pursuant to the North Carolina's Compensation Act, and since it was stipulated that the Petitioner's Employer and Carrier accepted the claim under the North Carolina Workmen's Compensation Act (Transcript of Record, Page 7), it is necessary then to look to North Carolina law to determine that Section 97-82 of the North Carolina Workmen's Compensation Act provides in regard to such agreements that when approved they constitute an award enforceable by court decree. The decisions of the Supreme Court of North Carolina and the North Carolina Industrial Commission also conclusively establish that such an agreement when approved by the Commission becomes an award. In *Biddix vs. Rex Mills, Inc.*, 75 S.E. 2d 777, the North Carolina Supreme Court said in part: "Where an employer and employee agree upon a settlement in which compensation is granted before a claim is filed, the Commission must approve the settlement. G.S.§97-82. This provision was inserted in the statute to protect the employees of the State against the disadvantages arising out of their economic status and give assurance that the settlement is in accord with the intent and purpose of the Act. Therefore, in approving the settlement in which compensation is awarded, the Commission acts in a judicial capacity. The voluntary settlement as approved becomes an award enforceable by a court decree. G.S.§97-87; *Tucker v. Lowdermilk*, 233 N.C. 185, 63 S.E.2d 109."

The same situation was considered by the Supreme Court of North Carolina in *Tucker vs. Lowdermilk,* 63, S.E.2d 109. The North Carolina Supreme Court had before it in that case, the exact situation presented in the case here presented on Petition for Writ of Certiorari. In *Tucker vs. Lowdermilk,* supra, Claimant was injured on March 26, 1948. On April 30, 1948, the Claimant and Employer and Carrier executed an Agreement for Compensation for Disability on the Commission's Form 21, which was approved on May 12, 1948. The claimant later returned to work, but subsequently re-entered the hospital and requested a hearing before the Industrial Commission on September 6, 1949, to determine what additional compensation, if any, was due. The hearing before the Commissioner resulted in an award and the Employer and Carrier appealed to the Full Commission. The Commission found that the Claimant's claim for compensation was not barred by the limitations provisions of Section 97-47 of the North Carolina Workmen's Compensation Act, which provides the limitations for when application may be made for modification of an award based upon a change of a condition. The North Carolina Supreme Court, overruling the Commission and holding that the claim was barred, said: "The more serious question presented for determination, is whether or not, under the facts and circumstances disclosed by the record, the plaintiff's claim for compensation was barred under the provisions of G.S.§97-47, at the time he requested a hearing. This statute limits the right of review to twelve months from the date of the last payment of compensation pursuant to an award, except in cases in which only medical or other treatment bills are paid. In such cases review is limited to twelve months from the date of the last payment of such bills for medical treatment, paid pursuant to the provisions of the Compensation Act. An agreement for the payment of compensation when approved by the Commission is as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed upon appeal. G.S. §97-87."

The same question was presented to the Supreme Court of North Carolina in *White vs. Shoup Boat Corporation,* 135 S.E. 2d 216, where the Court there again said: "In interpreting the statute, we have said that an agreement to pay compensation, when approved by the Commission, is the equivalent of an award."

Petitioners respectfully submit therefore, that there was an award of compensation under the North Carolina Workmen's Compensation Act, pursuant to Article IV, Section 1 of the Constitution of the United States of America, and therefore, the provisions of the limitations of Section 440.19, Florida Statutes, 1965, should bar Claimant's claim. The only defense provided by Section 440.19, Florida Statutes, 1965, for failure to file a claim within two years from the date of the accident, is if Petitioner-Carrier or Petitioner-Employer *voluntarily* paid Respondent-Employee *without an award* during the period between the date of the accident and the date of the filing of the claim. Clearly, under North Carolina law, both as provided by the Statute, Section 97-82 of the Workmen's Compensation Act, and by the Court decisions, there was an award. The referenced section of the North Carolina Act, in referring to the agreement for compensation, states that if the agreement is approved by the Commission, it shall be for all purposes, enforceable by the court's decree. The agreement for compensation *was approved* and the Petitioner-Carrier did not pay Respondent-Employee until it was. This, as indicated previously, *was an award* of *maximum* payment possible under North Carolina law, and certainly, it cannot be said now to have been voluntary payments under the intent of the terms of Section 440.19, Florida Statutes, 1965. One could not ask, under North Carolina law, for more than the Respondent-Employee received. Respondent-Employee should not now be heard to argue that because the Petitioner's Employer and Carrier complied strictly with the North Carolina law that now he, the Respondent-Employee, can use that very

compliance with North Carolina law, which the Petitioners were required to do, to excuse the requirements of Florida law. Respondent-Employee is not a Florida resident. No bills are owing to Florida residents, and neither Florida nor its citizens can be harmed by a North Carolina resident, employed in North Carolina by a corporation doing business principally within the State of North Carolina, and the employee receiving benefits pursuant to North Carolina law.

Petitioners further reason that the claim before the Respondent, Florida Industrial Commission, was improper and the Respondent, Florida Industrial Commission, lacked jurisdiction to adjudicate Respondent-Employee's claim for the reason that Article IV, Section 1 of the Constitution of the United States of America requires that the Florida courts and the Florida Industrial Commission give full faith and credit to the award of the North Carolina Industrial Commission. The agreement for compensation entered into by Respondent-Employee and approved by the North Carolina Industrial Commission does constitute an award under North Carolina law. It is, therefore, entitled to the full force and effect of a judgment in a judicial proceeding and thus entitled under the Constitution of the United States to full faith and credit from sister states. This Court's attention, therefore, is requested to the now well-known decision of this Court in *Magnolia Petroleum Co. vs. Hunt,* supra. A number of decisions of courts other than this Court have indicated that in certain factual situations, the decision of this Court in *Industrial Commission of Wisconsin vs. E. E. McCartin,* supra, supersedes and changes the rules of law as set forth in the *Magnolia Petroleum Co.* case, supra. Petitioners reason, however, that the law stated in the *Magnolia Petroleum Co.* case is the law applicable to the facts and the law in this case. In the *Magnolia Petroleum Co.* case, this Court had occasion to consider the effect of the full faith and credit clause of the Constitution of the United States where awards are sought under the Workmen's Compen-

sation laws of two states. In that case, a resident of Louisiana was employed by a Louisiana concern under a Louisiana contract of employment. While doing work in the State of Texas under the Louisiana contract of employment with the Louisiana concern, he was injured and received compensation under the Texas Workmen's Compensation Act. Subsequently, he sought additional compensation under the more liberal Louisiana Act and this Court granted Certiorari to review the decisions of the Louisiana Courts affording the Claimant relief under the Louisiana Act. This Court in the *Magnolia Petroleum Co.* case held that the award in Texas, which was *res judicata* in the State of its award, must be given effect in all other states as also being *res judicata* of the same issues. This Court concluded that:

"Because there is a full faith and credit clause, a Defendant may not a second time challenge the validity of the Plaintiff's right which has ripened into a judgment and a Plaintiff may not for his single cause of action, secure a second or a greater recovery.

Here both Texas and Louisiana have undertaken to adjudicate the rights of the same parties arising from a single injury sustained in the course of employment under the same contract. * * * The remedies afforded to respondent by the Texas and Louisiana Workmen's Compensation laws are likewise rendered mutually exclusive by the Texas judgment and the full faith and credit clause. The Texas award, being a bar to any further recovery of compensation for respondent's injury, is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act.

It lends no support to the decision of the Louisiana court in this case to say that Louisiana has chosen to be more generous with an employee than Texas has. Indeed no constitutional question would be presented if Louisiana chose to be generous to the employee out of the general funds in its Treasury. But here it is petitioner who is required to provide further payments

to respondent, contrary to the terms of the Texas award, which, if the full faith and credit clause is to be given any effect, was a conclusive determination between the parties that petitioner should be liable for no more than the amount of the Texas award. * * * Whether the proceeding before the State Industrial Accident Board in Texas be regarded as a 'judicial proceedings,' or its award is a 'record' within the meaning of the full faith and credit clause and the Act of Congress, the result is the same. For judicial proceedings and records of the state are both required to have 'such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.' * * * If an employee employed in one state but injured in another has a different cause of action for compensation in each state because each has its own compensation statute, it could as well be argued in any case where plaintiff has recovered a judgment in one state, and seeks a second recovery in a second state for the same injury, that he is suing upon a second and different cause of action. But it has never been thought that an actionable personal injury gives rise to as many causes of action as there are states whose laws will permit a suit to recover for the injury or that despite the full faith and credit clause the injured person, more than one entitled to recover for breach of contract, could go from state to state to recover in each damages or compensation for his injury."

In the *McCartin* case, supra, the facts and the law applicable were in no way similar to the facts and law here and to that in the *Magnolia Petroleum Co.* case, supra. In *McCartin*, a resident of Illinois, employed by an Illinois concern under an Illinois contract of employment, was injured while doing work in Wisconsin. He applied for and received compensation from the Illinois Workmen's Compensation Commission, and entered into a settlement contract approved by the Illinois Workmen's Compensation Commission. The settlement contract approved by the

Illinois Commission itself specified that the settlement would not affect any rights the applicant would have under the Workmen's Compensation Act of the State of Wisconsin. This Court distinguished the *Magnolia Petroleum Co.* case by saying: "If it were apparent that the Illinois award was intended to be final and conclusive of all the employee's right against the employer, and the insurer, growing out of the injury, the decision in the *Magnolia Petroleum Co.* case would be controlled here. The Court there found that the compensation award under the Texas Workmen's Compensation Law was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state. * * * One of the provisions in the settlement contract which became the award was the statement that 'This settlement does not affect any rights that applicant may have under the Workmen's Compensation Act of the State of Wisconsin.' That statement was made a part of the contract at the request of the employee, who had been informed by the Wisconsin Commission that he was entitled to claim an additional amount of compensation in Wisconsin after recovering in Illinois. See *Interstate Power Co. v. Industrial Commission,* 203 Wis 466, 234 NW 889; *Salvation Army v. Industrial Commission,* 219 Wis 343, 263 NW 349, 101 ALR 1440; *Wisconsin Bridge & Iron Co. v. Industrial Commission,* 222 Wis 194, 268 NW 134. The employer's insurance carrier was likewise informed, and all the parties proceeded on the assumption that the employee was attempting to recover compensation under the statutes of both Illinois and Wisconsin, with credit to be given in Wisconsin for any sum recovered in Illinois. In furtherance of this common understanding, the above statement was inserted in the Illinois settlement contract and was brought to the attention of the Industrial Commissioner before he approved the contract."

The Texas law provided when an employee was entitled to compensation, he had no other right of action against the em-

ployer for injuries. This Court in the *McCartin* case, supra, said of the Illinois statute, in comparing it to the Texas statute: "But there is nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive."

Texas Revised Civil Statutes, Title 130, Article 8306, Section 3, provided in part as follows: "The employees of a subscriber and parents of minor employees shall have no right of action against their employer, nor against any agent, servant, or employee of said employer, for damages for personal injury, and the representatives or beneficiaries of deceased employees shall have no right of action against such subscribing employees, or his agent, servant, or employee for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the association as the same is hereinafter provided for. * * * No part of this section is intended to lessen or alter the employees existing rights or cause of action either against its employers, its subscribers or any third parties."

Comparatively, the North Carolina Act also provides that the rights of the Employee against the Employer thereunder are exclusive and, therefore, follows the Texas law. The North Carolina Workmen's Compensation Act, Section 97-10.1 provides, as quoted above, that the rights thereunder *shall exclude* all other rights.

7. Petitioners respectfully reason and submit therefore, that for the reasons heretofore stated, the Florida Supreme Court, Respondent, Florida Industrial Commission, now the Department of Commerce, Division of Labor and Employment Opportunities, and its Judge of Industrial Claims, has decided the substantial issues involved herein in a manner not in accord with the decision of this Court in *Magnolia Petroleum Co. v. Hunt*, supra, and that this Court may and should properly grant

this Petition for Writ of Certiorari and direct an order to be entered to that effect.

Respectfully submitted,

MONTEREY CAMPBELL, III
Petitioners Counsel of Record
155 West Davidson Street
Bartow, Florida 33830

APPENDIX

1. Order of the Supreme Court of the State of Florida:

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1969
WEDNESDAY, OCTOBER 29, 1969

E. M. WHITTENTON, INC., ET AL,
Petitioners,

vs.

PAUL W. NEIGHBORS, JR., ET AL,
Respondents.

CASE NO. 38,339

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs and argument of counsel for the respective parties, to review the order of the Florida Industrial Commission in said cause, bearing date February 6, 1969, and the Petitioner having failed to show that the essential requirements of law have been violated, it is ordered that said Petition be and the same is hereby denied.

The attorneys for respondent, Paul W. Neighbors, Jr., are awarded a fee in the amount of Three Hundred Fifty Dollars ($350.00) for services in this court.

It is so ordered.
A True Copy

TEST:

SID J. WHITE
Clerk Supreme Court

By: ELLA O'NIELL WILKINS
Chief Deputy Clerk.

2. Order of the Florida Industrial Commission Workmen's Compensation Division:

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

Claim No.: 246-52-8375 Date of Accident: Feb. 22, 1964

EMPLOYEE:
PAUL W. NEIGHBORS, JR.
1209 North McKay Street
Dunn, North Carolina 33402

Represented by:
Messrs. Cone, Wagner, Nugent,
Johnston, McKeown & Dell
Box 3411
West Palm Beach, Florida 33402
and
Lefferts L. Mabie, Jr., Esq.
314 South Baylen Street
Pensacola, Florida

EMPLOYER:
E. W. WHITTENTON, INC.
Box 1506
Fort Myers, Florida 33902

CARRIER:
SECURITY INSURANCE GROUP
Box 1918
Raleigh, North Carolina

Represented by:
Messrs. Tomasello, Campbell &
Dunlap
Drawer 30
Bartow, Florida 33830

COMPENSATION ORDER OF FULL COMPENSATION

This cause came on to be heard before the undersigned members of the Florida Industrial Commission, sitting as the full Commission, upon application of the employer and carrier for review of an Order of the judge of industrial claims dated April 11, 1968, which awarded the claimant compensation for temporary total disability, 175 weeks of permanent partial disability, attorney's fees, and costs. No objection to the absence of Commissioner Lightsey was interposed by counsel for any party to the cause.

We believe that in addition to the authority cited by the judge of industrial claims in his Order dated April 11, 1968, the judge's decision should be affirmed on authority of Sections 440.21(2) and 440.22, Florida Statutes, which provide that releases and agreements to waive the claimant's rights under the law are invalid.

Having considered the cause upon the record, briefs, and oral argument of counsel for the parties, and it appearing that the findings of fact of the judge of industrial claims are supported by competent substantial evidence which accords with logic and reason, and that said Order accords with the essential requirements of law within the meaning of *U. S. Casualty Co. v. Maryland Casualty Co.*, Fla. 1951, 55 So. 2d 741, and Sections 440.21(2) and 440.22, Florida Statutes, it is

ORDERED that said Order of the judge of industrial claims dated April 11, 1968, be and the same is hereby affirmed. It is further

ORDERED that the employer, E. W. Whittenton, Inc., by and through its insurance carrier, Security Insurance Group, pay to claimant's attorneys the sum of $300 for their services on behalf of claimant in this review before the full Commission.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this February 6, 1969.

3. Compensation Order of the Judge of Industrial Claims, Florida Industrial Commission:

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

Claim No. 246-52-8375 Date of Accident: Feb. 22, 1964

EMPLOYEE:

PAUL W. NEIGHBORS, JR.
1209 North McKay Street
Dunn, North Carolina 33402

Represented by:
Lefferts L. Mabie, Jr.
314 S. Baylén St.
Pensacola, Florida
and
Robert R. Johnson, of Cone, Wagner, Nugent, Johnson, McKeown & Dell
Box 3411
West Palm Beach, Fla. 33402

EMPLOYER:

E. W. WHITTENTON, INC.
Box 1506
Fort Myers, Florida 33902

CARRIER:

SECURITIES INSURANCE GROUP
Box 1918
Raleigh, North Carolina

Represented by:
Monterey Campbell of Tomasello, Campbell & Dunlap
Drawer 30
Bartow, Florida 33830

After due notice, this cause came on to be heard before the undersigned Judge of Industrial Claims on January 5, 1968 in Wauchula, Hardee County, Florida.

It is the position of the claimant that he is entitled to compensation under the Florida Workmen's Compensation law, although he concedes that he has received payment of certain compensation and medical expense from the carrier pursuant to the North Carolina Workmen's Compensation law. He further contends that he has filed no claim for compensation under the North Carolina Compensation Act, and that his sole claim is for benefits under the Florida Workmen's Compensation law.

It is the position of the employer-carrier that the accident sustained by the claimant comes under the sole jurisdiction of the North Carolina Workmen's Compensation law and that claimant entered into an agreement with the employer and carrier to be subject to and bound by the provisions of the North Carolina Workmen's Compensation law, and therefore the State of Florida has no jurisdiction to determine the claim filed in this case.

Based upon the stipulation, the testimony and all other evidence presented, the undersigned Judge of Industrial Claims finds:

(1) That in April of 1961 claimant, Paul W. Neighbors, Jr., was employed by E. M. Whittenton, Inc., as a long-haul truck driver. The claimant is a resident of North Carolina and the contract of employment was made in the State of North Carolina. The employer, E. M. Whittenton, Inc., is a Florida corporation domiciled in Fort Myers, Lee County, Florida. The duties of the claimant as truck driver require him to haul produce in many states, including the State of Florida.

That on February 22, 1964, claimant was driving his truck enroute from North Carolina to Fort Myers, Florida when he

was involved in an accident near Wauchula, in Hardee County, Florida.

(2) Claimant was subsequently seen and treated by Dr. C. F. Siewers, orthopedic surgeon in Fayetteville, North Carolina. He sustained injuries to his back, right leg, left hip, fracture of the left femur and small bone of the left leg, together with abrasions and contusions over his body.

Subsequently he was operated on and Rush pins were inserted in his left leg. His left knee cap was later removed when he continued to complain of pain.

(3) On April 3, 1964, while claimant was in the hospital in North Carolina, he signed an agreement that he would be subject to and bound by the provisions of the North Carolina Workmen's Compensation Act, at the request of an insurance Adjustor. Thereafter the carrier commenced payment of compensation at the weekly compensation rate of $37.50, beginning from the date of the accident.

(4) On September 29, 1967 Dr. Siewers released claimant as having reached maximum medical improvement, with permanent disability of 25% of the left lower extremity; 5% of the right lower extremity, and 5% of the back.

It was the further opinion of Dr. Siewers that claimant should refrain from persistent standing or walking. His left leg was shorter than his right, which required the use of a lift on his left shoe, and he walked with a cane.

Dr. Siewers indicated that there was a possibility that some time in the future the claimant might require a fusion of the left knee.

(5) The claimant, Paul W. Neighbors, Jr., is a 23-year-old male with an 8th grade education, whose work history consists

of farming, filling station work, heavy equipment operator and truck driver. At the time of his industrial accident on February 22, 1964, his average weekly wage was $97.58, making his compensation rate $42 a week under the Florida Workmen's Compensation Act.

At the time of hearing he was pumping gas in a filling station in Dunn, North Carolina, at an average weekly wage of $50. His duties consist solely of pumping gas. He complained of pain in his back and legs when bending, stooping and walking.

That on November 9, 1967, claimant filed a claim for compensation with the Florida Industrial Commission and that no claim has ever been filed for benefits under the North Carolina Workmen's Compensation Act, although he did execute the standard for "Agreement For Compensation For Disability" in North Carolina, at the request of an insurance Adjustor. Section 440.03, Florida Statutes, provides: "Every employer and every employee, unless otherwise specifically provided, shall be presumed to have accepted the provision of this chapter, respectively to pay and accept compensation for injury or death, arising out of and in the course of employment, and shall be bound thereby, unless he shall have given prior to the injury, notice to the contrary as provided in Section 440.05." Section 440.99 (1), Florida Statutes, provides: ". . . provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein."

I therefore find that under the circumstances of this case, the Florida Industrial Commission does have jurisdiction of the parties and subject matter. The decision in *Wisconsin vs. McCardin*, 330 U.S. 622, recognizes that an award of the type here involved under statutes that are applicable in both Florida and North Carolina, does not foreclose an additional award under the laws of another State, such as Florida.

The carrier has voluntarily paid under North Carolina Compensation Act temporary total compensation at the rate of $37.50 a week from February 22, 1964 to September 29, 1967, and is entitled from February 22, 1964 to the time he reached maximum medical improvement on September 29, 1967.

(6) I find that claimant will not be able to return to any type of employment such as he has previously performed, and considering his age, education, environment, work history and ability to compete on the open labor market, I find that he has sustained 50% permanent disability, based upon loss of wage-earning capacity.

(7) Claimant's attorney Robert R. Johnson has rendered a necessary and valuable service to the claimant, Paul W. Neighbors, and is entitled to a reasonable attorney's fee in the amount of $1500.00. In arriving at said attorney's fee I have taken into consideration quantum merit, the work involved and the novelty of the case.

WHEREFORE IT IS THE ORDER of the undersigned Judge of Industrial Claims that the employer E. M. Whittenton, Inc., by and through its carrier, Security Insurance Group, do:

1. Pay claimant Paul W. Neighbors, Jr., temporary total compensation at the rate of $2 a week from February 22, 1964 to the time he reached maximum medical improvement, the carrier to receive credit for any temporary total compensation paid during that period under the North Carolina Compensation Act.

2. Pay claimant 175 weeks of compensation for permanent partial disability at the rate of $42 a week, commencing as of September 29, 1967, which was the date that he reached maximum medical improvement, with credit for any compensation previously paid for the period since September 29, 1967.

3. Pay claimant's attorney Robert W. Johnson, a reasonable attorney's fee in amount of $1500.

4. Pay the costs of these proceedings.

DONE AND ORDERED at Lakeland, Polk County, Florida, this 11th day of April, A. D., 1968.

PROOF OF SERVICE

I, MONTEREY CAMPBELL, III, Attorney for the Petitioners herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of January, 1970, I served copies of the foregoing Petition for Writ of Certiorari and accompanying Appendix on the several Respondents thereto by mailing a copy in a duly addressed envelope with Air Mail postage prepaid to:

Larry Klein, Esquire and
Cone, Wagner, Nugent, Johnson, McKeown & Dell
507 N. Olive Avenue
West Palm Beach, Florida

and

Lefferts L. Mabie, Jr., Esquire
314 S. Baylen Street
Pensacola, Florida
Attorneys for Respondent, Paul W. Neighbors, Jr.

and

Patrick H. Mears, Esquire
General Counsel
State of Florida
Department of Commerce, Division of Labor and
Employment Opportunities
Tallahassee, Florida
Attorney for Respondent, Florida Industrial Commission

Monterey Campbell, III

MONTEREY CAMPBELL, III
Attorney and Counsel of Record for
Petitioners
155 West Davidson Street
Bartow, Florida 33830